

PROPOSED CONSTITUTIONAL AMENDMENTS

PROPOSED CONSTITUTIONAL AMENDMENTS— APPELLATE COURTS

S. J. R. No. 36

Proposing a constitutional amendment to change the name of the Courts of Civil Appeals and the names and qualifications of the Justices of the Supreme Court and to prescribe the jurisdiction and authority of the appellate courts.

Be it resolved by the Legislature of the State of Texas:

Section 1. That Article V, Section 1, of the Texas Constitution be amended to read as follows:

"Section 1. The judicial power of this State shall be vested in one Supreme Court, in one Court of Criminal Appeals, in Courts of Appeals, in District Courts, in County Courts, in Commissioners Courts, in Courts of Justices of the Peace, and in such other courts as may be provided by law.

"The Legislature may establish such other courts as it may deem necessary and prescribe the jurisdiction and organization thereof, and may conform the jurisdiction of the district and other inferior courts thereto."

Sec. 2. That Article V, Section 2, of the Texas Constitution be amended to read as follows:

"Sec. 2. The Supreme Court shall consist of the Chief Justice and eight Justices, any five of whom shall constitute a quorum, and the concurrence of five shall be necessary to a decision of a case; provided, that when the business of the court may require, the court may sit in sections as designated by the court to hear argument of causes and to consider applications for writs of error or other preliminary matters. No person shall be eligible to serve in the office of Chief Justice or Justice of the Supreme Court unless the person is licensed to practice law in this state and is, at the time of election, a citizen of the United States and of this state, and has attained the age of thirty-five years, and has been a practicing lawyer, or a lawyer and judge of a court of record together at least ten years. Said Justices shall be elected (three of them each two years) by the qualified voters of the state at a general election; shall hold their offices six years, or until their successors are elected and qualified; and shall each receive such compensation as shall be provided by law. In case of a vacancy in the office of the Chief Justice or any Justice of the Supreme Court, the Governor shall fill the vacancy until the next general election for state officers, and at such general election the vacancy for the unexpired term shall be filled by election by the qualified voters of the state. The Justices of the Supreme Court who may be in office at the time this amendment takes effect shall continue in office until the expiration of their term of office under the present Constitution, and until their successors are elected and qualified."

Sec. 3. That Article V, Section 3, of the Texas Constitution be amended to read as follows:

"Sec. 3. The Supreme Court shall exercise the judicial power of the state except as otherwise provided in this Constitution. Its jurisdiction shall be co-extensive with the limits of the State and its determinations shall be final except in criminal law matters. Its appellate jurisdiction shall be final and shall extend to all cases except in criminal law matters and as otherwise provided in this Constitution or by law. The Supreme

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Court and the Justices thereof shall have power to issue writs of habeas corpus, as may be prescribed by law, and under such regulations as may be prescribed by law, the said courts and the Justices thereof may issue the writs of mandamus, procedendo, certiorari and such other writs, as may be necessary to enforce its jurisdiction. The Legislature may confer original jurisdiction on the Supreme Court to issue writs of quo warranto and mandamus in such cases as may be specified, except as against the Governor of the State.

"The Supreme Court shall also have power, upon affidavit or otherwise as by the court may be determined, to ascertain such matters of fact as may be necessary to the proper exercise of its jurisdiction.

"The Supreme Court shall appoint a clerk, who shall give bond in such manner as is now or may hereafter, be required by law, and he may hold his office for four years and shall be subject to removal by said court for good cause entered of record on the minutes of said court who shall receive such compensation as the Legislature may provide."

Sec. 4. That Article V, Section 5, of the Texas Constitution be amended to read as follows:

"Sec. 5. The Court of Criminal Appeals shall have final appellate jurisdiction coextensive with the limits of the state, and its determinations shall be final, in all criminal cases of whatever grade, with such exceptions and under such regulations as may be provided in this Constitution or as prescribed by law.

"The appeal of all cases in which the death penalty has been assessed shall be to the Court of Criminal Appeals. The appeal of all other criminal cases shall be to the Courts of Appeal as prescribed by law. In addition, the Court of Criminal Appeals may, on its own motion, review a decision of a Court of Appeals in a criminal case as provided by law. Discretionary review by the Court of Criminal Appeals is not a matter of right, but of sound judicial discretion.

"Subject to such regulations as may be prescribed by law, the Court of Criminal Appeals and the Judges thereof shall have the power to issue the writ of habeas corpus, and, in criminal law matters, the writs of mandamus, procedendo, prohibition, and certiorari. The Court and the Judges thereof shall have the power to issue such other writs as may be necessary to protect its jurisdiction or enforce its judgments. The court shall have the power upon affidavit or otherwise to ascertain such matters of fact as may be necessary to the exercise of its jurisdiction.

"The Court of Criminal Appeals may sit for the transaction of business at any time during the year and each term shall begin and end with each calendar year. The Court of Criminal Appeals shall appoint a clerk of the court who shall give bond in such manner as is now or may hereafter be required by law, and who shall hold his office for a term of four years unless sooner removed by the court for good cause entered of record on the minutes of said court.

"The Clerk of the Court of Criminal Appeals who may be in office at the time when this Amendment takes effect shall continue in office for the term of his appointment."

Sec. 5. That Article V, Section 6, of the Texas Constitution be amended to read as follows:

"Sec. 6. The Legislature shall divide the State into such Supreme judicial districts as the population and business may require, and shall

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establish a Court of Appeals in each of said districts, which shall consist of a Chief Justice and at least two Associate Justices, who shall have the qualifications as herein prescribed for Justices of the Supreme Court. The Court of Appeals may sit in sections as authorized by law. The concurrence of a majority of the judges sitting in a section is necessary to decide a case. Said Court of Appeals shall have appellate jurisdiction co-extensive with the limits of their respective districts, which shall extend to all cases of which the District Courts or County Courts have original or appellate jurisdiction, under such restrictions and regulations as may be prescribed by law. Provided, that the decision of said courts shall be conclusive on all questions of fact brought before them on appeal or error. Said courts shall have such other jurisdiction, original and appellate, as may be prescribed by law.

"Each of said Courts of Appeals shall hold its sessions at a place in its district to be designated by the Legislature, and at such time as may be prescribed by law. Said Justices shall be elected by the qualified voters of their respective districts at a general election, for a term of six years and shall receive for their services the sum provided by law. Each Court of Appeals shall appoint a clerk in the same manner as the clerk of the Supreme Court which clerk shall receive such compensation as may be fixed by law.

"On the effective date of this amendment, the Justices of the present Courts of Civil Appeals become the Justices of the Courts of Appeals for the term of office to which elected or appointed as Justices of the Courts of Civil Appeals, and the Supreme Judicial Districts become the Supreme Judicial Districts for the Courts of Appeals. All constitutional and statutory references to the Courts of Civil Appeals shall be construed to mean the Courts of Appeals."

Sec. 6. That Article V, Section 16, of the Texas Constitution be amended to read as follows:

"Sec. 16. The County Court shall have original jurisdiction of all misdemeanors of which exclusive original jurisdiction is not given to the Justices Court as the same is now or may hereafter be prescribed by law, and when the fine to be imposed shall exceed \$200, and they shall have concurrent jurisdiction with the Justice Court in all civil cases when the matter in controversy shall exceed in value \$200, and not exceed \$500, exclusive of interest, unless otherwise provided by law, and concurrent jurisdiction with the District Court when the matter in controversy shall exceed \$500, and not exceed \$1,000, exclusive of interest, but shall not have jurisdiction of suits for the recovery of land. They shall have appellate jurisdiction in cases civil and criminal of which Justices Courts have original jurisdiction, but of such civil cases only when the judgment of the court appealed from shall exceed \$20, exclusive of cost, under such regulations as may be prescribed by law. In all appeals from Justices Courts there shall be a trial de novo in the County Court, and appeals may be prosecuted from the final judgment rendered in such cases by the County Court, as well as all cases civil and criminal of which the County Court has exclusive or concurrent or original jurisdiction as may be prescribed by law and this Constitution.

"The County Court shall have the general jurisdiction of a Probate Court; they shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis and common drunkards, grant letters testamentary and of administration, settle accounts of executors, transact

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all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis and common drunkards, including the settlement, partition and distribution of estates of deceased persons and to apprentice minors, as provided by law; and the County Court, or judge thereof, shall have power to issue writs of injunctions, mandamus and all writs necessary to the enforcement of the jurisdiction of said Court, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the County Court, or any other Court or tribunal inferior to said Court. The County Court shall not have criminal jurisdiction in any county where there is a Criminal District Court, unless expressly conferred by law, and in such counties appeals from Justices Courts and other inferior courts and tribunals in criminal cases shall be to the Criminal District Court, under such regulations as may be prescribed by law; and in all such cases an appeal shall lie from such District Court as may be prescribed by law and this Constitution. When the judge of the County Court is disqualified in any case pending in the County Court the parties interested may, by consent, appoint a proper person to try said case, or upon their failing to do so a competent person may be appointed to try the same in the county where it is pending in such manner as may be prescribed by law."

Sec. 7. This amendment becomes effective September 1, 1981.

Sec. 8. This proposed constitutional amendment shall be submitted to the voters at an election to be held on November 4, 1980. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment to change the name of the Courts of Civil Appeals and the names and qualifications of the justices of the Supreme Court and to prescribe the jurisdiction and authority of the appellate courts."

Adopted by the Senate on April 2, 1979: Yeas 25, Nays 1; Senate concurred in House amendment on May 28, 1979: Yeas 29, Nays 1; adopted by the House, with amendment, on May 25, 1979: Yeas 109, Nays 28, two present not voting.

Filed without signature.

Filed with the Secretary of State, May 31, 1979.